

Guidelines for Completing the NEPA Determination Form

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Consistent with Federal Highway Administration (FHWA) and Nebraska Department of Roads (NDOR) procedures, this document provides guidance in completing the NEPA Determination Form to ensure that all potential environmental impacts are being considered, and compliance with all applicable laws, regulations and executive orders are being properly documented.

The NEPA Determination Form was developed by the Nebraska Department of Roads (NDOR) and the Federal Highway Administration (FHWA) to assist project sponsors in gathering and organizing materials for environmental analysis required under the National Environmental Policy Act (NEPA). **All federal-aid projects** developed or reviewed by the Nebraska Department of Roads (NDOR) must have a NEPA Determination Form completed. These Guidelines provide general guidance and information to assist the project sponsor in the completion of the NEPA Determination Form.

Completion of the NEPA Determination Form will establish the type of NEPA documentation required to complete the project and meets criteria identified in Title 23, Code of Federal Regulations, Section 771. The types of NEPA documentation are: Categorical Exclusion (CE), an Environmental Assessment (EA) or Environmental Impact Statement (EIS). These procedures apply to projects that involve FHWA funding or approvals and do not apply to state or locally funded actions.

Regardless of NEPA determination, a proposed action must:

- 1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- 2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made;
- 3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

NEPA

Many projects do not result in significant social, economic, and environmental impacts and are processed as Categorical Exclusions (CE) as described in 23 CFR771.117. The level of Categorical Exclusion is determined by the responses provided in this form and by criteria contained in the current Programmatic Categorical Exclusion Agreement (PA) between FHWA and NDOR. The determination is based on the type of project being proposed and its effects on the environment. Projects with the potential for “significant” impacts require preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

The NEPA documentation process is a stepped process with incremental reviews and approvals as the project moves forward. If the proposed action is to be classified as a categorical exclusion, the approval process will consist of an initial review by NDOR to determine that the action qualifies as a CE. This initial review may result in a determination that additional documentation is needed for compliance with other federal or state regulations. This additional documentation will use the CE Documentation Form and will need to be completed prior to approval of the CE.

At any time during the development of a proposed action, if a change in the project scope or the project limits occurs, the NDOR Environmental Section must be contacted to evaluate potential impacts.

Construction activities, right-of-way acquisition, and final design may not begin until the NEPA approval process is complete. However, appropriate environmental studies (e.g., scoping field

reviews, technical studies) and developing preliminary engineering details to gain adequate information to complete NEPA documentation may occur.

NOTE: NEPA determination does not constitute compliance with other environmental regulations such as those associated with the Clean Water Act, the Historic Preservation Act, the Endangered Species Act, or other applicable agency regulations. Regulatory letters providing concurrence on an agency resource do not preclude other actions the project sponsor must carry out such as 404 permit, best management practices, minimization of impacts, and similar environmental commitments.

Agency Coordination

Early coordination with other federal, state, and local agencies is an essential ingredient in the NEPA process. It is important that project sponsors notify resource agencies that they have a proposed project. This allows resource agencies to be aware of actions that may have environmental concerns in the proposed action area. Interagency coordination with resource agencies provides essential information about the natural, cultural and historic context of the environment encompassing the project. This coordination provides a mechanism for those with jurisdictional responsibilities an opportunity to discuss the outcome of the transportation decisions and solutions. The project sponsor initiates the early coordination process with resource agencies to provide them with project information and to receive specific information regarding the probable impacts of the various alternatives so they can complete this form. Early coordination helps in determining the appropriate level of documentation, developing the project's purpose and need, determining alternatives, identifying issues of concern and the scope of environmental resources that would be affected by the project etc. **Early coordination must occur before conclusion of the NEPA process as part of the early project development process.**

To ensure that the proposed action will comply with the requirements of NEPA, the Endangered Species Act, the National Historic Preservation Act, the Clean Water Act, and other applicable Federal and State laws, the project sponsor will solicit comments from all resource agencies applicable to the project, including the agencies listed below, and attach that correspondence to the form. This contact is to begin the NEPA process and not the application process for permits. Applying for permits is initiated after NEPA approval.

1. U.S. Fish and Wildlife Service (for comment on the possibility of impacting federally-listed threatened and endangered species and/or critical habitat, Migratory Bird Treaty Act, Fish & Wildlife Coordination Act, and Bald & Golden Eagle Act).
2. U.S. Army Corps of Engineers (for comment on the possibility of impacting wetlands and other Waters of the U.S.)
3. Nebraska Game and Parks Commission (for comment on the possibility of impacting state-listed threatened and endangered species).
4. Nebraska State Historical Preservation Office (SHPO) (for comment on the possibility of impacting cultural resources).
5. Nebraska Department of Environmental Quality (for comment on the possibility of impacting water quality, stormwater runoff permit, or hazardous waste compliance).
6. U.S. Environmental Protection Agency (USEPA) (for comment on protection of human health, and the natural environment, including land, air and water resources).
7. Nebraska Commission on Indian Affairs (for comment on potential Tribal impacts).

Requirements for NEPA Documentation Preparation

The project sponsor must insure that NEPA documentation is prepared by qualified staff or consulting firms. The principal author must have three years qualified experience and a bachelor's degree or two years qualified experience with a master's degree within the field of environmental science, planning, engineering or a closely related field.

Qualifying experience is considered to be work and training having to do with the preparation and coordination of acceptable NEPA documents. "Acceptable" means documents that have been formally accepted by NDOR/FHWA and must be approved documents with minimum comments or revisions. Documents that require multiple revisions and re-submissions will not be considered acceptable for meeting prequalification requirements. Qualifying experience must also include successfully completing NDOR's Categorical Exclusion (CE) class.

Upon authorization to proceed, the project sponsor shall submit to NDOR a detailed description of each preparer's education and experience. This description shall include the following:

- Resume of key professionals authoring NEPA documentation.
- List of other experience with technical writing and/or specific environmental studies prepared.
- Certification of completion of NDOR's Categorical Exclusion (CE) Class.

NEPA Determination Form

Describe the following components:

Project Sponsor: Identify the organization (e.g., NDOR, county, local agency) that formally proposes the project and is responsible for project funding, project implementation, project evaluation, or a combination thereof.

Project Contact: Provide the name of the contact person for the proposed project, including street address, telephone number(s), and email address.

NDOR District: Provide the NDOR district where the proposed action will be located.

Project Name and Location: Give a brief description of location, including city, county, highway/roadway name, highway number, beginning and ending mileposts, and if necessary, give the distance to nearest landmark (e.g., 15 miles north of local airport). Attach maps identifying the vicinity, project's location, and surrounding land uses. The vicinity map can be created using a county map as the base, highlighting the study area, and showing a north arrow, scale, project name, and county. A project location map uses a USGS map or other mapping in an urban area and shows the proposed logical termini, the existing facility, north arrow, and scale.

Latitude / Longitude: Provide the latitude and longitude of the proposed project site, and/or provide the Section, Township, and Range the project is located in.

Limits of Work: Provide the locations of the beginning and ending points of work. Start and End locations can be Mileposts, Stations, or brief description. This will be used when reviewing the logical termini description. (Logical termini for project development are defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts. Logical termini may need to be longer than a proposed project's construction termini due to specific analysis that needs to be considered.)

Project Description: Give a brief description of the project setting (e.g., urban, rural) and existing conditions. Describe project activities and include such information as locations, length, logical termini, type of improvement/construction, distinct project features, etc.. Provide information relating if the project is in a rural or urban setting. Describe existing roadway facilities (Sidewalks, shoulders,

guardrail, etc.). Note any critical resource areas (historic, cultural or environmental) or sensitive noise receptors (schools, hospitals, churches, residences, etc).

Environmental Study Area: An environmental study area will be established based on the area estimated to be potentially impacted by the project (i.e., the area of potential effect). The study area is established and confirmed by being documented on this form. At any time during the development of a proposed action, if a change in the project scope or the project limits occurs, the environmental study area will be reevaluated. This may result in the need for either additional studies or a reevaluation of the environmental document. For more information, see Chapter 5, Determining the Study Area, in the LPA manual.

Purpose and Need: Clearly identify and describe the underlying problem or deficiency (e.g., congestion, safety, system linkage). In addition, explain why the project is necessary (e.g., provide system continuity, capacity improvement, correct safety or roadway deficiencies). A clear, well-justified purpose and need statement explains why the expenditure of funds is necessary and worthwhile. The statement length and complexity will vary with the scope of the proposed project. For more explanation see Chapter 5, Defining the Purpose and Need, in the LPA Manual.

Special Project Information: Special design, environmental information or commitments, in addition to any permits which are anticipated, should be listed here. Although detail design is usually not available at this stage of the project development, estimations on a project's design criteria must be made as a basis to weigh the project's potential impacts to the environment. Such information may include: design speed, traffic volumes, typical section, structure type (culvert or bridge) and dimensions, design exceptions, etc...

Cost Estimate: Provide the preliminary estimates for engineering, construction, ROW, and Utilities.

Date of Inclusion in STIP/TIP: Provide date of inclusion in an approved State Transportation Improvement Program (STIP) and Transportation Improvement Program (TIP).

Questions

If a project sponsor has difficulty answering these questions, they are encouraged to review the appropriate section in the LPA manual and contact NDOR for assistance.

Type of Construction: New Construction/reconstruction includes but it is not limited to:

- Construction of a new road or interchange
- Relocating an existing route on a new alignment
- Upgrading roadway to current geometric standards. This work would require physical alternation of the existing cross-section. This could include the addition of shoulders, rehabilitation of existing main lanes, or adding center turn lanes in median.
- Widening an existing road (i.e., added through capacity of an existing facility, widening within existing ROW, and addition of travel lanes). Any addition of a turning lane that exceeds the length needed for a single turning movement (total of the entering taper, deceleration length, and storage length)" should be considered a widening project.
- Reconstruction of an existing route on approximately the old alignment where the old pavement structure is removed and replaced. This would include any project where the limits of construction expands beyond the existing roadway surface and includes such items as subgrade, adjacent foreslope, and ditch work.
- Widening, realigning, raising or relocating a bridge that requires placement outside of the existing right-of-way.
- Construction of new grade separation interchanges
- Realignment of intersections

- Changes to horizontal or vertical alignments
- Roadside work including shaping fillslopes, foreslopes and ditches. It does not include reshaping existing gravel surfaced roads and shouldering along paved roadways.
- Construction of new bicycle and pedestrian lanes, paths or facilities
- Railroad grade separation to replace existing at grade crossings.
- Construction of safety rest area

Routine repair and maintenance of existing facilities such as mill and overlay is not considered new construction.

Change of Use: An increase to through lane capacity can be described as: physically adding traffic lanes, removing traffic bottlenecks, straightening curves, grade separation for either roads or railroads, or adding turn/auxiliary lanes long enough to function as a through traffic lane and or increase capacity. Also auxiliary lanes that are added between interchanges to improve operational efficiency that are at least 1.5 miles long or are made continuous through a series of successive interchanges will be considered change of use. In general any project intended primarily to increase traffic carrying capacity of the highway system

Travel Patterns: Examples of permanent changes to community travel patterns are closures, new intersections, bypasses, or converting a road to a higher classification.

Traffic Management: The project sponsor will select “**Yes**” if temporary road, bridge, ramps, causeway, detours or closure will occupy a location more than 3 days. (Note: Traffic management schemes will have an environmental impact, either beneficial or adverse, as a result of the changes in driver behavior. In addition the public's perception of traffic management schemes may be influenced by factors such as disruption encountered during the construction phase, visual intrusion caused by, for example, extra traffic signs, severance and perceived danger.) Detours must be included in the footprint of environmental surveys and environmental analyses.

If the project sponsor selects “**No**”, provisions must be made for access by local traffic and so posted, through traffic dependent business must not be adversely affected, the temporary road, detour or ramp closure must not substantially change the environment consequences of the action, and there must not be any substantial controversy associated with the use of temporary road, detour, or ramp closure. If these conditions cannot be accomplished, the project sponsor must select “**Yes**”.

Access Control: Access is defined as a means of vehicle ingress or egress between a highway and abutting property or an intersecting local public road or street. Access is also defined as entrances or driveways from properties to a public road system. The project sponsor will select “**Yes**” if the project proposes to add access or if the proposed relocation of existing access will not meet recommended spacing standards.

Right of Way (ROW): If more than 1.5 acres per linear mile of ROW acquisition or permanent easement is needed for the proposed project, the project sponsor will select “**Yes**”. Consider construction easements and utility relocations and partial or full takes of right of way.

Relocations: If residential or business displacements are anticipated, the project sponsor will select “**Yes**”.

Cultural Resources: The project sponsor would select “**Yes**” if there are possible impacts to listed or potential historic properties, archaeological sites or traditional cultural properties. A listed historic resource refers to the National Register of Historic Places (NRHP). Properties listed in the Register include buildings, highway bridges, irrigation ditches, railroads, mines, trails and wagon roads,

roadway features and landscapes that are significant in American history, architecture, archeology, engineering, and culture. A potential historic property includes structures 50 years or older, archaeology sites, cultural sites, etc. that have not yet been placed on the list.

Excavations of 6 inches or more may require clearances for archaeology. Sites that have been disturbed over time are less likely to have any serious impacts, but intact archaeological deposits may exist in any location, regardless of prior earth disturbances. Permitted professional archaeologists must investigate undisturbed or minimally disturbed areas, on federally funded transportation projects.

Section 4(f): The project sponsor would select “**Yes**” if there are Section 4(f) properties present and possible impacts could occur. Section 4(f) properties are publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site (includes historic bridges and eligible for NRHP listing) officially designated as such by a Federal, State or local agency. Per regulations (23 CFR 771.135), FHWA may not approve the use of these lands unless a determination is made that: 1) there are no feasible and prudent alternatives to the use of land from the property; and 2) the action includes all possible planning to minimize harm to the property resulting from such use.

A “use” of a Section 4(f) resource, as defined in “Title 23, Code of Federal Regulations, Part 771.135(p),” occurs: 1) when land is permanently incorporated into a transportation facility; 2) when there is a temporary occupancy of land that is adverse in terms of the statute’s preservationist purposes; or 3) when there is a constructive use of land. A constructive use of a Section 4(f) resource occurs when the transportation project does not incorporate land from a Section 4(f) resource, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. For example, a constructive use can occur when the projected noise level increase, attributable to the project, substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by Section 4(f). The finding of constructive use is extremely rare.

Even if a project sponsor has agreement from the official(s) with jurisdiction over that property that they are in approval of the impacts or improvements of the proposed action, the project sponsor would still select “**Yes**” if there is a use of the property.

Section 6(f): If the project converts land acquired or developed with Land and Water Conservation Funds, the project sponsor must select “**Yes**”. The NE Game and Parks Commission can assist in determining if L&WCF funds were used.

Air Quality: Currently all areas within Nebraska are within containment. However, some areas within the state are nearing the threshold. Project sponsors should be aware of this requirement and conduct an inquiry to ensure that the proposed action location is not within a maintenance or non-attainment area.

Noise: The project sponsor will also select “**Yes**” if an auxiliary lane is added between interchanges that is at least 1.5 miles long or made continuous through a series of successive interchanges. Consideration should also be given when the proposed action involves pile driving, structure demolition, blasting, etc...

Wetlands: The project sponsor will select “**Yes**” if the amount of wetland permanently impacted has the potential to be more than one-tenth (1/10) of an acre or activities will modify as defined by the 1987 Corps of Engineers Wetland Delineation Manual.

Federal regulations require that impacts to wetlands be avoided and minimized to the greatest extent practicable. Thereafter, unavoidable impacts must be mitigated.

Wetlands are determined by reviewing a copy of relevant NWI maps, county soils maps, field notes from a site visit, and photographs. Maps and photos should show relative location of wetlands to proposed action by delineating the proposed construction area. If wetlands are present on federally funded transportation projects impacts greater than 500 square feet requires a Wetland Finding. Several permits may be required for wetland impacts.

Floodplain: The project sponsor will select “**Yes**” if the project will modify the topography as a result of either placement or removal of materials which results in more than a one foot rise or the locally regulated maximum in the 100 year water surface elevation.

Streams: A perennial stream is defined as a stream that flows continuously during both wet and dry times.

Rivers: Project sponsor will compare the location of the proposed action to the Wild and Scenic or National Recreational River list, the Study Rivers, and the National Rivers Inventory. Designation protects river and a 0.25 mile corridor from development. It also includes a corridor 1.5 miles up or downstream of stream tributaries to the designated river.

Threatened & Endangered Species: The project sponsor will select “**Yes**” if federal or state listed species or critical habitat is known to exist in the study area. In order to determine if a proposed action has the potential to affect federal or state listed threatened or endangered species or critical habitat, the project sponsor can contact the USFWS and NGPC, visit <http://www.fws.gov/mountain-prairie/ne.html>, or request NDOR to access and review the Nebraska Natural Heritage Database.

Environmental Justice: The project sponsor will select “**Yes**” if the areas in which these populations are located are subject to disproportionate impacts. Some questions to consider in making this determination are: Will the proposed project increase traffic in low-income and minority neighborhoods? Will minority owned businesses that serve a minority or low-income population be impacted by the project? Will access from minority or low-income neighborhoods to various services or cultural destinations (church, parks, community center) be affected by the proposed project? Will the project require displacement of any minority or low-income residences?

Farmlands: The project sponsor needs to determine if farmland will be acquired for the proposed action or if the proposed action will indirectly lead to the conversion of farmland. Farmland subject to protection requirements does not have to be currently used for cropland. It can be forest land, pastureland, cropland, or other land, but not water or urban built-up land. Right-of-way that is clearly not farmland (rocky terrain, sand dunes, etc.) and the project will not indirectly convert farmland are not covered by FPPA.

“Prime farmland” is defined as land that has the best combination of physical and chemical characteristics for producing food, and other agricultural crops.

“Unique farmland” is land other than prime farmland that is used for production of specific high value food and fiber crops as determined by the Secretary of Agriculture.

Soil survey maps depicting soil types meeting prime and unique farmland criteria are available from NRCS. Where mapping is incomplete the NRCS should be consulted.

Hazardous Waste/Materials: Stringent environmental laws and regulations expose the project sponsor to full responsibility for proper handling and disposal of hazardous materials whether the original source is from project sponsor activities, from a tenant, or inherited when property is acquired. Every

federal project requires the project sponsor to scope and identify properties, particularly those located along the right-of-way, that have documented or potential contamination based on current or historical information. This work is done in order to identify potential contamination sources that may affect project design and construction relative to property acquisition and worker/public health and safety. Projects that have grading or excavation below the existing toe-of-slope should include details regarding the extent of contamination and the status of enforcement actions. The assessment should include details regarding the extent of contamination and the status of enforcement actions at the individual properties if known. Federal and State regulatory database sources should be used.

Projects located in rural settings with little or no planned excavation or demolition often does not require the hazardous materials assessment described above. A memorandum detailing the justification for not developing the assessment will suffice. Provide as an attachment results of database reviews and corridor site visits (if needed for projects with scope that may encounter contaminated soils or water).

If the assessment indicates potential contaminate sources, the project sponsor will select **“Yes”**.

Public Interest: Consider whether there is substantial interest (from a community standpoint) in the proposed action, or in environmental resources surrounding the project. Controversy on projects is typically not on minor, routine, or ongoing undertakings. Effects on the quality of human environment such as local opposition to the action, environmental protection or special interest groups, competing commercial interests, or expert disagreement are indicators of potential controversy. There should be no substantial opposition from any organized groups or agencies.

Permits and Special Provisions:

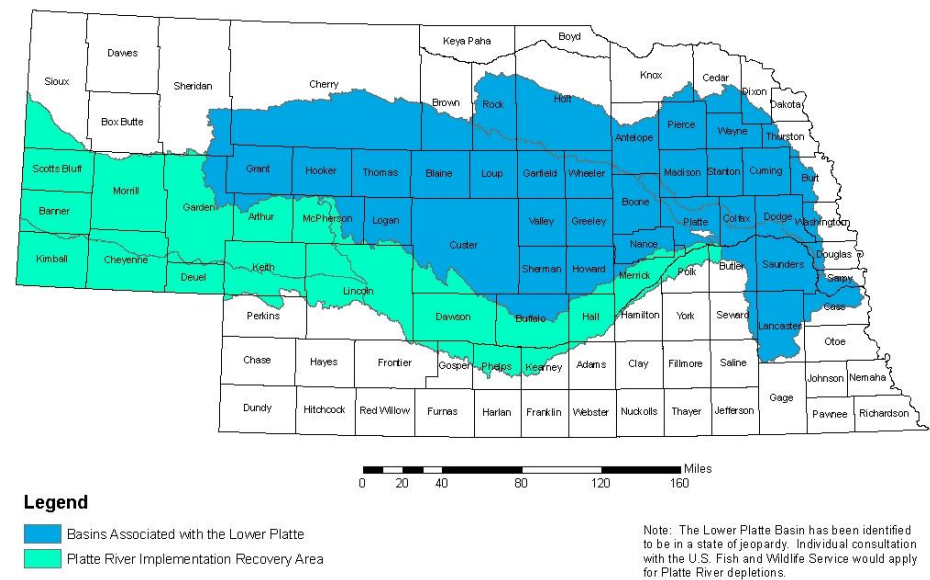
There are several environmental permits that may be required before a project can go to advertisement. Considering the information provided above, identify those permits that appear to be appropriate at this time for the proposed action.

Wellhead Protection Areas: The project sponsor will select **“Yes”** if adjacent water resources may be affected by proposed construction activities. The Nebraska Department of Environmental Quality oversees the Wellhead Protection Area(s) in Nebraska and will be able to assist in locating wellheads within the proposed study area. NDOR special provisions will be included in the contract to address these protected areas.

Platte River Depletion: The project sponsor will select **“Yes”**, if the proposed action may require the development of an on-site or new borrow site with exposed surface water, inclusion of detention basins that retain water longer than 72 hours, or the temporary withdrawal of groundwater within the basins of the Platte River. Additional coordination will be required with the Nebraska Department of Natural Resources. See map below to determine if the project is located within Platte River basins of concern.

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Basins that have potential to impact Platte River Flows (depletion concerns).



Additional Comments

The project sponsor is responsible to provide any additional information or potential impacts not addressed above that may assist in determining NEPA classification.

Preparer Information and Sign-off

In summary, the project sponsor is responsible for clearly stating the proposed project's purpose and need, describing the proposed project, answering the questions, and inclusion of all data that supports these statements.

Review, Certification, and Approval

NDOR will review responses and visit the proposed project site. During their review if NDOR has questions, they will contact the project sponsor for additional information and clarification. Once approvals are completed by NDOR and if necessary FHWA, NDOR will provide a copy of the signed NEPA Determination form to the project sponsor.

NOTE: Review/Certification and Approval cannot be performed by the same individual.